APPEAL NO. 040051
FILED FEBRUARY 5, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on December 1, 2003. The hearing officer resolved the disputed issue by deciding that the compensable injury of _____, does not include an injury to the appellant's (claimant) lumbar spine in the form of nerve root damage at L2-L3. The claimant appealed, disputing the extent-of-injury determination. The respondent (carrier) responded, asserting that the claimant's appeal is untimely and urges that the Appeals Panel dismiss the appeal for lack of jurisdiction, or, alternatively, affirm the decision and order of the hearing officer.

DECISION

Affirmed.

We find no merit in the carrier's assertion that the claimant's appeal was untimely. The Texas Workers' Compensation Commission (Commission) records indicate that the hearing officer's decision was mailed to the parties on December 9, 2003. Under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)), unless the great weight of evidence indicates otherwise, the claimant is deemed to have received the hearing officer's decision five days after it was mailed; in this case deemed receipt is December 14, 2003. A request for appeal is timely if it is mailed on or before the 15th day after the appellant receives the decision and if it is received by the Commission, on or before the 20th day after the date of receipt of the decision. Section 410.202. Rule 143.3(c). On June 17, 2001, Section 410.202 was amended to exclude Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal period. The claimant had until January 8, 2004, to file her appeal. The claimant's appeal was post-marked January 7, 2004, prior to the expiration of the 15-day period and was received by the Commission on January 12, 2004. The claimant's appeal was timely.

The parties stipulated that the claimant sustained a compensable injury on _____, and the carrier accepted injuries to bilateral knees and a lumbar sprain/strain. The claimant testified that she worked as an assistant manager for the employer and fell over two empty tote bins on _____, injuring her knees and her lower back. At issue was whether the compensable injury included an injury to the lumbar spine in the form of nerve root damage at the L2-L3 level. The claimant had the burden of proof on that issue and it presented a question of fact for the hearing officer. The 1989 Act makes the hearing officer the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). As such, the hearing officer was required to resolve the conflicts and inconsistencies in the evidence and to determine what facts the evidence established. Based on the evidence presented at the CCH, the hearing officer was not persuaded that the claimant proved by a preponderance of the credible

evidence that the compensable injury includes an injury to the claimant's lumbar spine, in the form of nerve root damage at L2-L3. Nothing in our review of the record indicates that the challenged determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Edward Vilano
Appeals Judge